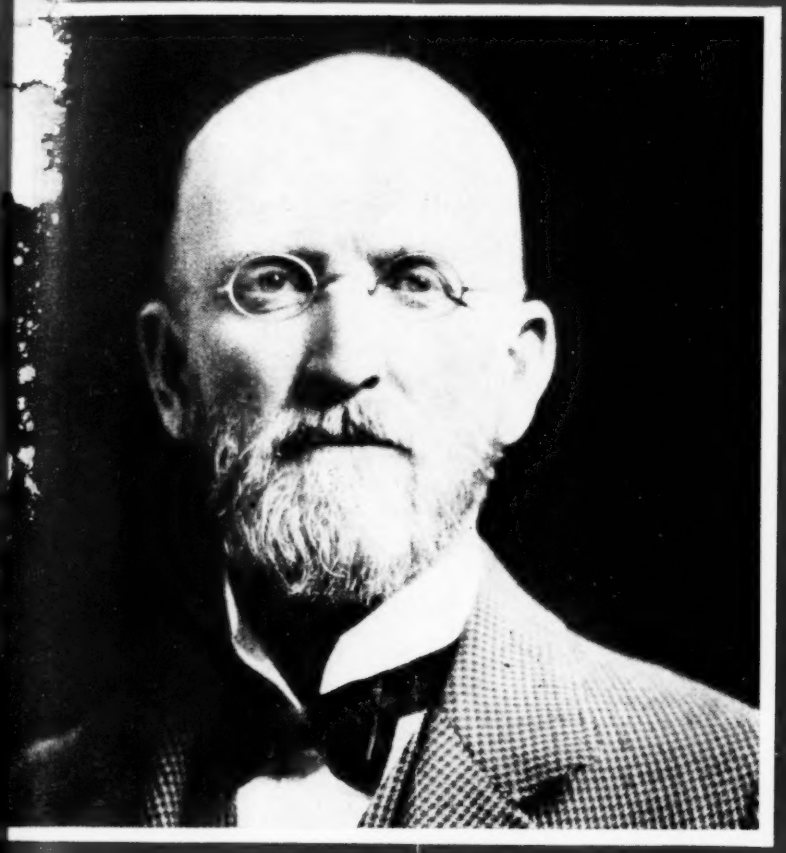

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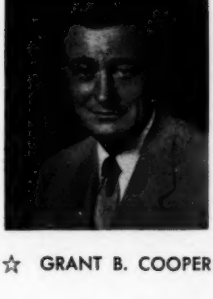


☆ ☆ ☆ ☆ ☆ ☆ ☆ ☆ GRANT B. COOPER

» » IS IT IN THE BEST INTERESTS of justice for a judge to publicly castigate jurors whose verdict or lack of verdict is contrary to his opinion on the merits of the case tried in his court?

While this does not occur often, when it does it becomes the basis of newspaper stories and television coverage which result in a lessening of the respect of the public for our judicial processes.

In one case where the jury brought in a first-degree murder verdict but in the subsequent proceedings decreed life imprisonment rather than death as the penalty, the judge commenting on the prescribed punishment called it "an extremely bad verdict" and added that he "could not understand" how the jury could have reached such a decision.

The bar has long taken the position that it is not within the legitimate function of a trial judge to "second-guess" the jury. Three years ago the Conference of Bar Delegates adopted Resolution No. 43, which parallels to some extent Canon No. 7 of the Conference of California Judges, which was adopted on August 30, 1949, that "A judge should be considerate of jurors, witnesses and others in attendance upon the court."

This is similar to Canon No. 9 of the American Bar Association, on judicial ethics.

Resolution No. 43 was submitted by Walter Ely to the delegation of our Association, which adopted it as its own and with the approval of our board of trustees submitted it to the State Bar office. It was subsequently approved by the Conference of State Bar Delegates, as follows:

"RESOLVED, that the Conference of State Bar Delegates recommends . . . a provision which shall condemn the practice of a judge of any court of the State of California, following the return of a jury verdict in a trial over which such judge presides, to castigate or in any manner publicly reprimand the jury concerning its verdict."

Accompanying this resolution was the following Statement of Reasons:

"On isolated occasions, wide publicity, detrimental to the Bench and Bar, has resulted from certain trial judges criticizing jurors upon the return of verdicts. Such action on the part of the judges cannot help but affect the fearless and inde-

pendent judgment of jurors in future cases, with the consequent weakening of constitutional guarantees of jury trials. Jurors who sacrifice their time and personal interests at the demand of the State and in furtherance of their civic duty should not be subjected to gratuitous indignity.

"Furthermore, such comments from the bench reflect upon the dignity and credibility of the judiciary. In the body of his instructions the judge cautions the jurors that their judgment is to be freely, independently and conscientiously exercised and that they are the sole and exclusive judges of the facts.

"By criticizing the verdict immediately following its return, the judge in effect, implies that his instructions were incorrect and that the jury's independent judgment is markedly limited."

In an era when the public is being served large and indigestible portions of television fare based on the functioning of our judicial system, it would seem that it is the duty of serious, ethical and earnest practitioners of the legal profession to take what steps we can to conserve the dignity and high reputation of the bench and bar—and our jury system.

We have done what we can at the moment regarding the participation of members of the bar in the television "courtroom" drama by condemning lawyers' invasion of this field. There are obvious advantages to adherence to the views of our Association on this matter.

But if jurors who sacrifice their time and personal interests to help achieve the functioning of our administration of justice are to be exposed to harsh comment on their good sense if not their probity by the very man—the jurist—whose position and views they have been taught to respect, it would seem something should be done.

It is hoped that calling attention to the official position of our Association as expressed in Resolution No. 43 on the question of judges' comments on jury verdict may constitute a reminder of desirable judicial procedure. Our judges have a duty and an obligation to refrain from acts which might be considered an unwarranted invasion of the province of the "twelve good men and true" whose services are so vital to our system of the administration of justice.

THIS MONTH'S COVER

Robert Henry Fauntleroy Variel, the scholarly-looking gentleman on this month's cover, was an important force in establishing the permanent structure of the Los Angeles County Bar Association. He served as Secretary of the Association from 1916 until 1929, and his minutes for the meeting of March 30, 1916, are the earliest minutes of the Association which have been found. He also prepared and distributed the first report of the Association for the year 1916, at which time the Association had 560 members in good standing. Earlier, in 1900, he had been President of the Association.

COMMENT
from a reader

GIBSON, DUNN & CRUTCHER
634 South Spring Street
Los Angeles 14, California
December 2, 1960

Mr. Frank E. Loy
Editor and Chairman of
The Bulletin Committee
Los Angeles BAR BULLETIN
433 South Spring Street
Los Angeles 13, California

Dear Frank:

I was interested to see John Bicknell's picture on the cover of the November 1960 issue of the Bulletin. You probably did not know that he was the founder in 1872 of the firm now known as Gibson, Dunn & Crutcher. At the time of Mr. Bicknell's death in 1911 the firm name was Bicknell, Gibson, Trask, Dunn & Crutcher. Both his name and that of Walter Trask were dropped when they passed away but the firm name was not changed thereafter.

Mr. Bicknell first came to California in 1860, when he acted as a scout for a wagon train from St. Louis to Sacramento. He taught school in Sacramento for a number of years and then returned to the midwest to study law at the University of Wisconsin. On graduation be began practice in St. Louis and came to Los Angeles in 1872, where he began the practice of law, and in 1890 took Walter Trask into partnership.

Yours sincerely,
/s/ Herbert F. Sturdy

Contempt As A Sanction

By Raymond R. Roberts

Commissioner, Superior Court

» » CHILD SUPPORT PAYMENTS have traditionally been regarded as a different type of judgment than the ordinary civil judgment, and of late have been treated far differently than alimony or other orders in domestic relations decrees.

The social aspects of increased relief rolls by aid to needy children, the economic impossibility of enforcing small periodic payments, and the frustration resulting from insecurity of lack of regularity of payment has caused the courts to have the district attorney compel compliance through contempt and threat of contempt rather than by execution or lien.

Rule 28 provides that child support payments may be ordered paid to the court trustee. When a delinquency occurs the trustee notifies the district attorney who then cites the defaulting father into court for contempt.

Where the support payments are part of an integrated agreement the remedy of contempt is not available (*Plumer* v. *Superior Court*, 50 Cal. 2d 631). Because of the language used in this later case there is no uniformity of opinion as to whether or not an order for support based upon a stipulated amount is enforceable by contempt.

There is a feeling among some practitioners that the *Plumer* case (*supra*) and its extensions, and the severity of interpretation has rendered contempt as a remedy practically useless. However, the apparent success of Rule 28, and the obvious fact that Reciprocal Enforcement cases are enforced chiefly by contempt belies this belief.

Four elements are necessary to allege and prove:

1. A valid order requiring the defendant to make payments (*Harlan* v. *Superior Court*, 94 Cal. App. 2d 902); a description of the order should include, if it is a decree, the date signed, filed and entered. The precise date must be shown, and it should be parenthetically noted that the minute order at a divorce hearing is not an enforceable order. The interlocutory decree is the only valid order, and it must properly be described by date.

2. Knowledge of the order prior

Commissioner Raymond R. Roberts of the Superior Court in Los Angeles received his LL.B. degree from Loyola University, in 1948. He is a member and past president of the San Fernando Valley Bar Association, and served as a trustee of the Los Angeles County Bar Association in 1957, '58, and '59. He is also a member of the Administrative and Legal Aid Committees of the State Bar Association.

to the violation (*Phillips* v. *Superior Court,* 22 Cal. 2d 256).

3. Failure to pay with a specific allegation on a specific date (*Warner* v. *Superior Court,* 126 Cal. App. 2d 821);

4. Ability to comply with the order from which willfulness may be inferred (*Bailey* v. *Superior Court,* 150 Cal. App. 2d 377).

It cannot be too strongly stressed that each of these elements must be alleged in the affidavit. This affidavit constitutes the complaint and frames the issues before the court (12 Cal. Jur. 2d 79).

"The absence of essential facts, the existence of which are necessary to be shown in the affidavit as a condition precedent to the exercise of jurisdiction to proceed in contempt cannot be cured by proof upon the hearing." *McCormick* v. *Superior Court,* 184 ACA 692.

The most frequent confusion seems to arise from the requirement to allege the specific act of contempt (No. 3 above). Merely stating total amount in default is sufficient for issuance of a writ of execution but not for a contempt allegation. The allocation of recent payments to amounts that accrued sometime back may be helpful in accounting, but this might preclude properly stating an allegation of contempt.

Each date on which a payment falls due, and there is a failure to make a payment, constitutes a new, separate and distinct offense. Each such date may be a sufficient count for a separate conviction of contempt. (*Warner* v. *Superior Court, supra.*) There is no need to put down every date that a payment falls due, starting with the original order. There is no need to put the total amount accrued or the total amount delinquent. It is sufficient to state one or several specific dates when a payment became due, and the fact that no payment was made.

The fourth element can be successfully eliminated if it can be stated that the respondent was personally served with a copy of the order. "When a court . . . makes an order . . . [of] support . . . for his child, proof that such order was made, filed and served on the parent and proof of noncompliance therewith shall be *prima facie* evidence of a contempt of court." (C.C.P. 1209.5.)

Thus the procedure has been, in compliance with Rule 28, to have the judge make a written order while the parties are in court, have the mother's attorney serve the respondent father in open court and immediately file an affidavit of service. There appears to be no reason why a resourceful attorney could not fill in the appropriate blanks of a form as the order is recited and serve the father in every case, whether or not the provisions of Rule 28 are desired.

If a copy is thus served, then the

elements to be alleged are: the order and its date, service of a copy and failure to receive payments. If it cannot be alleged that the defendant was personally served, then there must be an affirmative statement that the defendant has the ability to comply, which should include that he worked and the salary he made.

If the affidavit is exact and complete according to the above rules then petitioner's job is practically complete. Service of a copy of a complete affidavit puts the burden then on the respondent father. Whereas a criminal complaint may allege a violation of a statute in the same language, and there may be slight variations between the complaint and proof, the essence of a criminal trial is the evidence adduced at the trial. In civil contempt the opposite is true, the affidavit must be not only complete but exact. (*In re Felthoven*, 75 Cal. App. 2d 465.)

Also remember that the proceedings, being criminal in nature, preclude forcing an alleged contemner from testifying as a witness against himself. (*Ex parte Gould*, 99 Cal. 360.)

Where a dispute arises, the proof must be beyond a reasonable doubt rather than by a preponderance of the evidence (*Quezada* v. *Superior Court*, 171 Cal. App. 2d 528).

However, assuming the affidavit is complete and exact, what is next required of the mother to enforce the contempt? Strictly speaking, nothing until the father controverts one or more of the allegations. Those not traversed are deemed admitted (*Mitchel* v. *Superior Court*, 163 Cal. 423 and *Lindsey* v. *Superior Court*, 76 Cal. App. 419).

The affidavit can be received as evidence (*Vernon* v. *Superior Court*, 38 Cal. 2d 509). And once the affidavit is admitted the burden of showing liability and lack of willfulness is on the contemner (*Rappaport* v. *Superior Court*, 39 Cal. App. 2d 15; *Donovan* v. *Superior Court*, 39 Cal. 2d 848).

Actually there appears to be some justification for the statement that except for obvious jurisdictional defects, where no objection is made to the sufficiency of the affidavit it must be liberally construed in favor of its sufficiency (*Hughes* v. *Moncur*, 28 Cal. App. 462).

The cases seem to indicate a plaintiff may introduce the affidavit and rest, and this may be sufficient to hold a respondent in contempt.

"The petition shows that the court had before it the affidavit of a Mr. Lyon upon which the order to show cause was based, and that there was no answer, counteraffidavit or other evidence on behalf of the petitioner and therefore the allegations of the affidavit are deemed to be admitted. • • •

"There is no merit in the contention that the attorney could not sign the affidavit alleging the contempt." (*In re Larrabee*, 29 Cal. App. 2d 240.)

A successful prosecution for contempt begins and quite often ends with a carefully prepared affidavit in support of the order to show cause.

Contested Adoptions in Los Angeles County

By Jean Louise Waller

Jean Louise Waller is a native of Santa Ana, California. She graduated from University of Southern California School of Law in 1955 and was admitted to the State Bar in 1956. A Deputy County Counsel in Los Angeles since 1958, during the two-year period she has served as Legal Counsel to the Los Angeles County Bureau of Adoptions. Her private practice is in the field of corporation law.

» » AS ADOPTION WAS unknown to the common law, adoption proceedings in California are based upon Sections 221 through 230 of the California Civil Code, together with the case law and practices that have developed in this State since 1870.

Paragraph 7 of Section 226 of the California Civil Code which is subtitled "Recommendation to deny petition: Reference to superior court" states as follows:

"If the findings of the State Department of Social Welfare or the county adoption agency are that the home of the petitioners is not suitable for the child and it recommends that the petition be denied, the county clerk upon receipt of the report of the State Department of Social Welfare or the county adoption agency shall immediately refer it to the superior court for review."

This portion of the code section is all that is set forth in the way of "procedure" for the conduct of a contested adoption matter. It has never been necessary for the California appellate courts to discuss or determine rules of procedure for an adoption action in which there is an Objector to the granting of the petition. Therefore, the practices generally followed in the courts in Los Angeles County provide the only precedent for the conduct of a contested adoption matter.

The Los Angeles County Bureau of Adoptions is licensed by the State Department of Social Welfare as a "county adoption agency," pursuant to Section 1640 of the Welfare and Institutions Code; and since September 1951 the Los Angeles County Bureau of Adoptions has been and now is the authorized agent of the State Department of Social Welfare in and for the County of Los Angeles for the purpose of investigating, examining, and making reports to the court upon independent petitions for

adoptions filed in the local superior court, as well as performing the function of accepting relinquishments, caring for children, placing children for adoption, making case studies, and performing other duties that necessarily evolve from the functions which they are licensed to perform. In accordance with Paragraph 5 of Civil Code Section 226, the Los Angeles County Bureau of Adoptions, except in the case of the adoption of a child by a step parent where one parent retains his or her custody and control of the child, submits to the Superior Court "a full report of the facts disclosed by its inquiry *with a recommendation regarding the granting of the petition.*" (Emphasis added.)

Some of the most common reasons for a recommendation of denial by the authorized investigative agency are:

1. *Health.* If either or both of the petitioners has a serious illness which would affect the normal life expectancy of the person to the extent that he might not be able to see the child through its minority, a denial is recommended. In such an unfortunate situation, the home may be completely suitable for the minor child, with the exception of the health problem. If this be the case, the hearing on the petition consists almost entirely of medical evidence. Both the petitioners and the objectors are expected to present their medical specialists or advisers in court for expert testimony and cross-examination.

2. *Recent Conviction of a Serious Crime.* A criminal record which is recent in date and includes a felony conviction is deemed sufficient cause for a recommendation of denial of a petition for the adoption of a minor child. The existence of an arrest record, coupled with some other difficulty, such as financial irresponsibility or a history of the excessive use of intoxicants, also gives rise to a possible denial of the petition. The recent conviction of a crime involving a child, such as child molestation or contributing to the delinquency of a minor, can be cause for a recommendation of denial.

3. *Neglect of Natural Children by Petitioner.* If a petitioner has a natural child which he has placed for adoption or has abandoned, there may be a recommendation of denial. Failure to comply with a court order for the support of children where there was ability so to do is sometimes grounds for a recommendation of denial. This latter factor, however, is generally found in combination with some other inadequacy in the home of the petitioners, in order for the investigating agency to see fit to make a recommendation of denial.

4. *Age.* If the petitioners are 50 years or more older than the child they seek to adopt, there may be a recommendation of denial on the basis that the petitioners might not survive until the child reaches majority. Such a situation may be complicated by factors of ill health or lack of financial resources.

5. *Unstable Marital History.* When either or both petitioners have had multiple prior marriages which have failed, such a history may give rise to a recommendation of denial on the basis of lack of stability in the proposed adoptive home.

6. *Insufficiency of Consent.* Although the whereabouts of the parents whose consent is necessary for the proposed adoption is known at the time of the filing of the petition for adoption, a parent or parents may disappear or refuse to communicate

with the adoption agency during the time specified for investigation. Also, inquiry by the adoption agency may bring forth facts previously unknown to the attorney for the petitioners, such as the fact that there is a presumptive father whose consent appears to be necessary. These circumstances may require the filing of a Petition to Declare the Child Free From Parental Control, pursuant to Section 701 of the Welfare and Institutions Code, or a Petition to Determine Necessity of Consent ("Sole Custody" Proceeding). It is the responsibility of counsel for the petitioners to bring such ancillary actions as are found to be necessary. If the jurisdictional defect of lack of consent is not cured or proceedings to cure the defect are not begun prior to the date upon which the report must be filed with the court, there will be a recommendation of denial either with prejudice or without prejudice to the petitioners.

In addition to these, there may be other reasons for an unfavorable recommendation which, standing alone, would not be sufficient cause to recommend a denial of the petition but, coupled with other negative factors in the proposed adoptive home, casts sufficient doubt upon the adequacy of the home for the particular minor to cause a recommendation of denial.

The report and recommendation by the licensed county adoption agency, which is required to be filed within 180 days from the filing of the petition, unless the court has, by a proper proceeding, extended the filing time, is filed with the Adoptions and Abandonments Section of the Los Angeles County Clerk's Office. Copies of the report to the court are sent to the attorney of record for the petitioners and to the office of the County Counsel as attorney for the objector. Appearance by the County Counsel on behalf of the Los Angeles County Bureau of Adoptions is permitted and required by the court, even though no formal pleading in the form of objections to the Petition for Adoption is filed.

Paragraph 7 of Civil Code Section 226, quoted above, specifies that the County Clerk shall *immediately* refer the matter to the Superior Court for review. Thus, the necessity for the filing of the usual Memorandum for Setting for Hearing is eliminated. The earliest possible court date is set and the notice thereof is served on all parties by the County Clerk's Office.

The hearing of a contested adoption is held in private, just as are all other adoption proceedings, in compliance with Civil Code Section 226m. The presence of witnesses in the courtroom during the entire hearing is permissible; however, it is sometimes advisable to also exclude certain witnesses at times when they are not testifying in order to protect the petitioners' privacy. The petitioners as the moving party open the case by presenting a *prima facie* case for adoption. It may seem logical that the objector would next present its case; however, as a practical matter, the general rule of procedure is that the petitioner continues with the case by next putting on his evidence to overcome the objections raised by the report of the adoption agency. At the conclusion of the petitioners' case, the objector presents any evidence it may have in support of or in addition to the matters raised by the report to the court and any evidence it may have in rebuttal of the petitioners' case.

As a report to the court by the State Department of Social Welfare

or its authorized agent, the Los Angeles County Bureau of Adoptions, is a requirement of the statute, the court must read and consider the same, together with all the evidence which is presented. The court report contains information regarding the petitioners and their home, which is positive in nature, as well as the negative elements that are found to exist. Thus, the time of court and counsel is somewhat wasted when the petitioners attempt to present facts favorable to them which have already been presented by the report of the objector. Counsel for the petitioners and counsel for the objector may stipulate that the report or parts thereof be received in evidence by reference. If no such stipulation is entered into, the court may give such weight as it sees fit to the report, based upon the apparent thoroughness of the investigation, the amount of factual material contained therein, and the soundness of the social evaluation presented. The maker of the report and his immediate supervisor are present at the hearing for the purpose of either testimony, cross-examination, or evidence, under 2055 of the Code of Civil Procedure.

Argument is presented or waived by both sides, as in any other civil action. Emotions may run high, and the tendency may be to argue on an emotional rather than factual plane. As the atmosphere is tense in a courtroom scene such as that which occurs in a contested adoption, it would seem to be better practice to avoid emotionalism wherever possible.

If the petition is granted over the objections, the requisite Consent and Agreement must be signed by the petitioners in the presence of the court. Findings of Fact and Conclusions of Law must be prepared unless waived by stipulation, and a Decree of Adoptions prepared and presented to the court for signature. If the objections are sustained and the Petition for Adoption is denied, the child will either be returned to his parent or parents or committed to the care and custody of the agency which made the recommendation of denial, pursuant to Section 226c of the California Civil Code. If the commitment is to the agency, it may be for the purpose of working out a suitable plan for the minor with the natural parents or it may be to arrange other adoptive placement. Experience dictates that in the case of a denial the court's order should be carried out forthwith. Difficult as the removal of the child may be, the petitioners can suffer no less if the separation is immediate. In fact, if the separation is not immediate it only leads to another distressing occasion for the petitioners or it allows for the possibility that the petitioners will take the child and flee from the jurisdiction, thus jeopardizing not only the child, but themselves.

Petitions for adoption may also be contested by means of the filing of a Petition to Withdraw Consent, pursuant to Section 226a of the Civil Code or by a Petition for a Writ of Habeas Corpus. Both of these actions are worthy of detailed discussion, and hence are merely mentioned herein for completeness.

Many of the unfortunate and even tragic situations that arise in the field of contested adoptions could be prevented if the parties to an adoption would seek legal counsel and follow the advice which is carefully and thoughtfully given by the attorney.

PROFILE

Louis H. Burke

By Richard Barry

Member of the 1960 BULLETIN *Committee*

» » IN AN UNPRECEDENTED three-term tenure as Presiding Judge of the Superior Court, Louis H. Burke has directed orderly changes in the administration of justice that have brought remarkable new efficiencies to the world's largest trial court. For his highly capable disposition of a difficult task he has been honored by his fellow judges with a vote of confidence that now carries him into a fourth term as their "boss." He received the annual award in 1960 from Town Hall for outstanding service to the community. From members of the bar he deservedly receives repeated expression of approval and appreciation for the important part he has played in conserving their valuable time by accomplishing a more productive use of court time. The developing effectiveness of pre-trial, discovery and other procedures that more quickly resolve a vast amount of litigation are the result of the combined effort of judges and practitioners alike, as Judge Burke would be the first to emphasize, but his major role in making the full use of this co-operative force certainly cannot be minimized. The results tell the story of his successful leadership.

To get the inside story of his success and report it here I called on him recently and asked him directly to account for being the first ever elected to a third and fourth term as presiding judge. Across a busy looking desk in his large chambers, Judge Burke, characteristically in shirt sleeves, his tie loosened and collar opened, pondered my question for only a moment and then grinned, "I just don't have very good sense, I guess," and that seemed to be the only answer I would get. But more seriously, he agreed that he has a tough administrative job, that it takes time to get trained to it, that a lot had been started in his first two terms that had to be finished and there was a certain advantage to a continuity of managementship under the circumstances. Anyway, from talking with this affable man, I knew that he had been honored not just because of his administrative ability, his serious purpose and active intelligence, qualities that are etched on his record, but as much because of his quiet, friendly personality that makes him one who is easy to know and like. Such a man has no difficulty in getting the cooperation of others. I thought, and then recalled that during the election campaign of 1942 the newspapers referred

to him as "The Abe Lincoln of the Attorney General race." I asked him why.

"I guess it was my lean and hungry look," he laughed. Then we talked about that campaign. He was thirty-seven years old and not well known, but because of his position as General Counsel with the League of California Cities he had traveled about the state a lot and was better known than the other announced candidates, Son and Kegley. The trouble was that two candidates for Governor, Public Utilities Commissioner Wallace Ware and Senator Robert Kenny, both prominent, decided that the going was too tough against the incumbent Earl Warren, so at the last minute they switched to the Attorney General race. Kenny, with a good reputation as a legislator, former judge and newspaperman, won, going away. At that time Burke not only was attorney for the League, he was also City Attorney of Montebello, where he was born; and with his brother Martin carried on a general practice in Los Angeles. Their father, a member of the Canadian Parliament, came to California for reasons of health when he retired. Louis was fourteen and Martin only thirteen months older when their father died in 1919. The two boys then took care of the family orange grove nad worked in a brick yard during vacations to finance their way through the Montebello public schools.

In high school Louis was president of the Student Body and won letters in four sports. The latter meant very little, he explains, because it was such a small school that everyone just had to be on a team. That may be, but this tall judge still moves around like an athlete and admits that he captained his college basketball team. The brothers both got their college and law degrees at Loyola in four years with Martin working full time on the sports staff of the *Los Angeles Examiner* to pay their way. Louis did the studying for both, keeping such meticulous notes that Martin, with a photographic memory acquired from newspaper work, was able to cram for examinations and get better grades than his more studious brother—a fact that Judge Burke happily recalls with pride. They were admitted to practice in 1927, and Louis was named City Attorney for Montebello the following year.

Louis' first experience in his profession came as a law clerk in the office of Thomas P. White, then a criminal attorney, now a Justice of our Supreme Court. This position was a memorable one for young Louis not just because of the training and experience he got in the office of an outstanding lawyer, but more because he became acquainted with that lawyer's secretary, Ruth Horsfall, who later later became Mrs. Burke and the mother of his five children: three daughters, and two sons named Pat and Mike. Pat is now seventeen, a senior in high school, plays football, is on the track team and argues like a lawyer. Mike, twenty-six, like his dad, a Loyola law graduate is married and does legal-aid work while in uniform at Fort Riley. Kathleen taught school until her marriage to Donald Peters, she manages two small Burke grandchildren and her insurance company-employee husband who, naturally, is also a law student. Sheila, now teaching, too, graduated from Immaculate Heart College, where her father is on the Board of Regents. Mary-Eileen, a freshman there, plans a nursing career.

At the end of World War II Major Burke, with two years of experience

as a trial judge in combat Germany, wanted to spend more time with his family and, therefore, gave up his League of California Cities position. But his extensive experience in municipal law brought him retainers from a number of California cities and counties then in the process of modernizing their forms of local government. He guided them through their transitions, on occasion staying on as City Attorney, until the executives of the new administrations became accustomed to their functions. This experience stood him in good stead when more recently he presided over the reorganization of the Superior Court, with its newly created position of Executive Officer, to whom are delegated budgetary and personnel responsibilities, as is done in modern city charters that create a Chief Administrative Officer or City Manager position.

Judge Burke was appointed to the Superior Court in November of 1951 by Governor Warren. He began his judicial career as a civil trial judge (but the new judge was unexpectedly confronted with an unassigned criminal matter when his car was stolen from the parking lot and he had to go home on the bus). In 1953 he was assigned to the Conciliation Court. In 1956 he was transferred to the Criminal Division, becoming its presiding judge in 1957 and in 1958 was elected by his colleagues as presiding judge of the entire court. But his name will always be linked with the Domestic Relations Division and his famous Conciliation Agreement, with its "Or Else" proviso which put teeth in reconciliation promises even to the extent of threatening county jail for violators.

Sceptics who will not believe that a written agreement "to agree" has any efficacy should have greater faith in their fellow men and take a look at the record. It is all convincingly set forth in a current report by Judge Roger Alton Pfaff, who is now presiding over the Conciliation Court and doing an outstanding job. But to get back to Judge Burke's contribution, it began when he was assigned to the Conciliation Court because he asked for it. (There were no other volunteers.) He had been deeply disturbed by his experiences in trying divorce cases and wanted to do something about it. At that time conciliation procedures were not new. France had adopted them in 1886, and California's conciliation laws had been in the books for more than a dozen years. But here, as elsewhere, they had not worked very well. Implemented by Judge Burke's imaginative determination, the procedures took on a new meaning here, and their publicized success changed the approach to conciliation in courts in many parts of the world.

Interestingly enough, the publicity started with a notable failure. A prominent movie colony couple attempted to reconcile, but the husband, Edmund Purdom, scoooted off to Europe with Linda Christian. *Time* magazine publicized this sad event but gave greater space (in several columns) to the amazing record of reconciliations in Los Angeles due to Judge Burke's methods. *Cosmopolitan*, the *Saturday Evening Post*, and a half dozen other national magazines followed with feature articles, some of them a bit sensational, but all complimentary to the Los Angeles program. *Pageant's* cover title in 1956 was "Love, Cherish or Go to Jail," the editors of that magazine rewording the Los Angeles Conciliation Agreement into a "Marriage Contract," the article sharing space

with one of those Jimmy Dean pieces (". . . a legend. They're wrong. He's a religion.") and some interesting photo art. Honestly disturbed couples across the county, however, bravely signed the contract—and forwarded it to Judge Burke, submitting, they supposed, to his jurisdiction. McGraw-Hill Book Company then asked him to write a book about his conciliation procedure (which he had described as one that changed the scenery of the marriage drama "from contagious antagonism, where division into sides is the rule, to a hopeful, dignified interlude in which agreements can be made") and he submitted a manuscript which they tentatively rejected with the request that the book contain less about marital problems and litigants and more about the judge. They also asked that his homespun psychological approach be tested against the theories of a professional psychologist.

Eventually the book was put together as a group effort with Judge Burke and Dr. Everett L. Shostrom, Dean of Psychology at Pepperdine College, discussing the theoretical phase of the text in the presence of Mildred and Gordon Gordon, a successful husband-and-wife writing team of novels of suspense, who listened with fascination and suggested additions or changes in the manuscript. Thus, with his collaborators, Judge Burke produced his remarkable *"With This Ring"*, a book that every married couple (and surely every lawyer) should read. It has a flavor and emotional impact that compares favorably with last year's best-selling *"Small Town D. A."* (written by another judge) and is educational as well. *"With This Ring"* is the story of how

a conciliation agreement grew into a phylosophy of marriage. Using fictional characters (who seem to be people you know), it reads like a novel and deals convincingly with personality problems, instabilities, sex and immaturity. And less you are misled about Judge Burke's role as an author by drawing any inference that collaboration meant ghostwriting, your doubts will be set quietly at rest by reading his article in the *American Bar Association Journal* (July 1956), "An Instrument of Peace", which affords an opportunity for comparison of rhetoric and style, that article becoming a representative chapter of his book.

Gene Sherman, *Los Angeles Times* columnist, after reading *"With This Ring,"* devoted a column to its principal author. He began with this statement: "Every now and then in a sea of cynicism around us you encounter a man of vast tolerance, understanding and noble dedication." Judge Burke, he wisely observed, is "no namby-pamby opportunistic moralizer but a physically rugged, gentle spoken, fact-facing, ingenious sort of a guy who not only is deeply concerned with the law but with humanity and how his fellow man can be helped with justice."

But Judge Burke's dedication to his work does not prevent him from having other interests: principally his family, but community affairs as well; and with his boys and his brother he has done a lot of sailing, winning a considerable number of trophies. He also has a surprising hobby that takes an hour or so out of each busy evening. He creates "paintings" without paint, brush or canvas. His only materials are carefully selected scraps of wood of different color, grain and texture; and a coping saw. The grain of the wood may clearly represent swirling clouds in a background or windswept sand. Mountains with shadowy crevices, buildings and figures appear out of intricately placed pieces of vari-colored woods, even including a green colored wood that has birdseyes that create a leafy effect for a weeping willow. Planks on a bridge are actual tiny planks. Wrinkles on a boy's pants are natural grain and the hole in his seat is a little knot. My art appreciation being of the I-like-what-I-like school, I am not qualified to say that his work will live forever. It should be noted, however, that his initial effort won a first prize at the 1959 Bar Convention art exhibit. It was placed in the category of "mosaics" which, of course, it wasn't, but they didn't know how else to classify it. This year he won an Honorable Mention. "So you see," he says, "I am slipping." But his pictures with utmost good taste blend into the paneled walls of his chambers and demonstrate imagination, ingenuity, and a fine sense of perspective. His ability to keep his perspective, I thought, as he showed me his pictures with good-humored pride, was perhaps the key to his success. His ambition, his strong sense of purpose, and the deadly seriousness that goes into his work have not caused him to take himself too seriously or lose the natural mildness and graciousness that make him a kind and understanding judge. And this, I concluded, has been his finest accomplishment—and one that has been effortless for him.

Gifts to Employees' Widows

By George F. Elmendorf

Member of the Los Angeles County Bar Association Committee on Taxation

» » TAX-FREE "GIFTS" by employers to widows of deceased employees will be more difficult to sustain as the result of recent developments in this field.

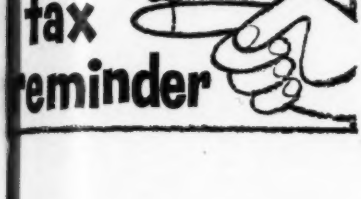
Here is a typical situation: Upon the death of the president of a corporation its directors vote to pay his widow $10,000 in recognition of his services, but without any moral or legal obligation to make the payment. Is all or any part of the $10,000 taxable income to the widow or may she treat the entire amount as a non-taxable gift?

Until recently, the courts have been fairly liberal in upholding the widow's contention that a payment of this nature is a non-taxable gift. Factors supporting the legal conclusion of gift are listed in *Florence S. Luntz* (1958) 29 T. C. 647, 650, as follows:

"(1) the payments had been made to the wife of the deceased employee and not to his estate; (2) there was no obligation on the part of the corporation to pay any additional compensation to the deceased employee; (3) the corporation derived no benefit from the payment; (4) the wife of the deceased employee performed no services for the corporation; and (5) the services of her husband had been fully compensated."

However, it is now clear that it is no longer safe to rely on these factors alone to support a gift.

Under Section 101(b) of the 1954 Internal Revenue Code amounts up to $5,000 that are paid by or for an employer to a deceased employee's beneficiaries are (subject to certain limitations) excluded from gross income. If a payment to a widow meets the requirements of Section 101(b) such payment, to the extent that it does not exceed $5,000, is not subject to tax. This is true regardless of whether the payment was intended as a gift or as something else. But what if the death benefit exceeds $5,000?



The Internal Revenue Service has recently announced that it will treat payments of the type under discussion as death benefits that are controlled by Section 101(b), under which a maximum of $5,000 is excludable from gross income, and that it will not follow *U. S. v. Reed* (6th Cir. 1960) 277 F. 2d 456 (Rev. Rul. 60-326, IRB 1960-42). In the *Reed* case the Court of Appeals affirmed without opinion a federal district court decision that a payment of $37,500 by a deceased husband's employer to his widow was in its entirety a non-taxable gift. The district court rejected the government's contention that Section 101(b), with its $5,000 limitation, was controlling.

Somewhat similar facts were involved in a recent Tax Court decision, *Estate of Mervin G. Pierpont* (1960) 35 T. C. No. 10. A widow claimed as a non-taxable gift a payment to her of $9,910.05 by her husband's employer. The directors authorized the payment in recognition of his services and "as a continuance of his salary." The Tax Court concluded that the payment was not a non-taxable "gift," but was taxable to the widow subject to the $5,000 exclusion under Section 101(b). The court's decision was based on the criteria set forth in *Commissioner* v. *Duberstein* (1960) 363 U. S. 278 involving the meaning of the word "gift" as used in Section 102(a) of the 1954 Code, which excludes gifts from gross income. In the *Duberstein* case the Supreme Court pointed out that a common-law gift is not necessarily a "gift" within the meaning of the statute. "A gift in the statutory sense," the Supreme Court said, "proceeds from a 'detached and disinterested generosity,' . . . 'out of affection, respect, admiration, charity or like impulses.'" Applying the principles of the *Duberstein* case, the Tax Court in the *Pierpont* case found "no solid evidence" that the payments "were motivated in any part by the widow's needs or by a sense of generosity or the like", and concluded that such payments were not intended as a "gift".

In the light of these recent developments, it is clear that taxpayers will face increasing difficulty in treating as non-taxable "gifts" any payments of the type under discussion that do not qualify as death benefits under Section 101(b). Whether or not Section 101(b) with its $5,000 limitation is controlling, as the Service contends, is a question that probably will have to be decided by the Supreme Court. Meanwhile, if "gift" treatment of such payments is sought, strict attention must be paid to the criteria established in the *Duberstein* case.

notes from your Law Library

by JOHN W. HECKEL • Head Reference Librarian, Los Angeles County Law Library

ADMIRALTY: *The Law of Demurrage* by Hugo Tiberg (Stockholm, Almqvist and Wiksell, 466 p.) treats the payment provided by law or contract for a loading use by the charterer longer than that normally required. The work is comparative with emphasis on the common law and Scandinavian systems. It is divided into a theoretical part dealing with the charterer's duties and a practical part dealing with lay time, despatch money, demurrage and damages for detention. Tables of cases and an index are included.

ANTITRUST: *The Antitrust Laws of the United States of America: A Study of Competition Enforced by Law* by A. D. Neale (Cambridge University Press, 516 p.) is a comprehensive, objective treatment by a British civil servant to satisfy English interest in the subject. The work was written in Washington D.C. at the National Institute of Economic and Social Research.

BIOGRAPHY: *The Worlds of Chippy Patterson* by A. H. Lewis (Harcourt, Brace, 311 p.) tells the true story of a mainline Philadelphia lawyer who deserted the social world to become the friend and defender of "rapists, abortionists, safecrackers, perverts, madams, whores and pimps". "Slay the sin rather than the sinner" was his philosophy. At the other end of the scale is the life of *Chancellor Robert R. Livingston of New York*, 1746-1813 by George Dangerfield (Harcourt, Brace, 532 p.) described by its author as "primarily a study in aristocracy."

CONSTITUTIONAL LAW: *Dry Revolution* by F. S. Schlosser. (Onnabrite Press, 313 p.) is a diary of the 1947 constitutional convention in New Jersey which revised the machinery of government and the courts. *The Quest for Equality* by R. J. Harris (Louisiana State University Press, 172 p.) is a series of lectures on the equal protection clause of the 14th amendment from its origins in Anglo-American history through its enactment and implementation in the courts. *The American Supreme Court* by R. G. McCloskey, (University of Chicago Press, 260 p.) is a popular, undocumented account of the role of the Supreme Court in the history of American Civilization. A bibliographical essay is appended.

CRIME AND CRIMINAL LAW: *Crime, Justice and Correction* by P. W. Tappan (McGraw-Hill, 781 p.) is an integrated study of the whole process involved in the causes of crime, judicial functioning and finally jails, prisons and the corrective period. *The Psychology of Crime* by David Abrahamsen, (Columbia University Press, 358 p.) is a psychiatrist's conclusions after years of studying the origins of crime in social pathology,

family tensions and psychosomatic disorders. Murderers, sex offenders, juvenile delinquents, and chronic offenders are treated in detail. Final chapters deal with criminal law and psychiatry, rehabilitation and prevention.

EDUCATION: *Tenure in American Higher Education: Plans, Practices and the Law* by Clark Byse and Louis Joughin, (Cornell University Press, 212 p.) Academic freedom has come to mean something in the post-war period. Tenure has been put under stress and the need for an academic due process has made itself felt in the disputes between professors and governing boards.

LITERATURE: *The World of Law* edited by Ephraim London (Simon and Schuster, 2 v.) is a collection of selected passages and some complete works concerned with law. The first volume, subtitled *The Law in Literature*, consists of fictional trials and studies of lawyers and judges from Dickens, Jack London, Chekhov, Mark Twain along with Wouk's Court-Martial from *The Caine Mutiny* and Terrence Rattigan's *Winslow Boy*. The second volume, subtitled *The Law as Literature*, gathers reports of actual trials, excerpts from testimony, judgments and critiques of the law. Here one finds Gandhi, Zola, Plato, Camus, Holmes, Hand, Boswell and H. L. Mencken among others. The volumes are good leisure reading of short excerpts to be picked up now and then with a few longer works to give a balance.

MEDICO-LEGAL: *Lumbar Discography and Low Back Pain* by D. D.

Bauer (Thomas, 89 p.) and *Traumatic Medicine and Surgery for the Attorney*, v. 2 (Central Book Co., 548 p.) deal with orthopedics.

PHILOSOPHY OF LAW: *Responsibility in Law and Morals* (Southern Methodist University Press, 108 p.) consists of essays by law professors and theologians on the mutual accountability of the individual and public authority in the legal process.

TAXATION: The County Law Library now receives the mimeographed opinions of the State Board of Equalization.

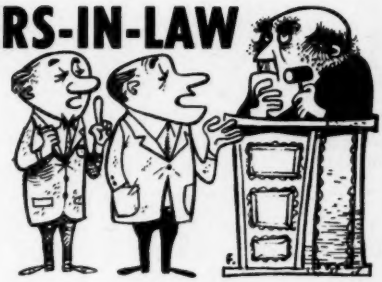
TRIALS: *Nothing but the Truth* by J. H. Wood (Doubleday, 286 p.) recounts the defense in a seemingly hopeless case of a man accused of murder in Georgia in 1956. *Trial of the U2* is an English translation of the proceedings with a commentary by H. J. Berman of Harvard University (Translation World Publishers, 158 p.) The unusual Scottish jury verdict of *Not Proven* is discussed by J. G. Wilson (Secker and Warburg, 255 p.) with illustrations from the trials of the two women accused of poisoning, Madeline Smith and Christina Gilmour; and two men tried for murder by shooting, Donald Merrett and Alfred Monson. *A Reasonable Doubt* by J. Symons (Cresset Press, 223 p.) examines three English cases: Steinie Morrison, James Camb in the Porthole case of 1947, and the conviction of J. J. Bennett for the murder of his wife in Yarmouth. The purpose is to discuss what is a reasonable doubt. Ten other brief accounts deal with trials, crimes and mysteries. *Scarlet and Ermine* by J. P. Eddy (Kimber, 240 p.) is a personal account of a journalist-lawyer associated with trials from Adolf Beck in 1904 to Gunther Podola in 1959. A concluding chapter discusses English prisons. *Nine Famous Trials* by J. E. Tracy (Vantage, 176 p.) prints accounts for a non-legal audience of trials notable historically, such as the Tichborne claimant, Mary, Queen of Scots, Aaron Burr, the mutiny on the Amistad and *In Re Neagle*.

WATER: *Water in California* by S. T. Harding, (Palo Alto, N-P Publishers, 231 p.) deals with the history of a vital natural resource through 100 years of state history and a discussion of the development of water law including special aspects such as irrigation, power, mining, and flood control.

Persons Who Served on the Federal Courts Criminal Indigent Defense Panel During November, 1960

Herbert J. Adden, Jr.
Antonio Bueno
Warren M. Christopher
Lawrence J. Crow
Richard M. Darby
Philip Deitch
V. Edward Drake
John Duncan
Milton Fenton
Robert L. Finkel
Paul L. Freese
Albert J. Galen
Allan S. Ghitterman
Walter E. Gregory
D. Clifford Higgins
Armand S. Lehmann
Richard Moore
Gerald I. Neiter
Robert M. Peterson
Marshall A. Rutter
Norbert A. Schlei
Herman Sillas, Jr.
James L. Tenner

BROTHERS-IN-LAW



By
GEORGE
HARNAGEL, JR.

THE DRAMA COLUMN

Herein, if the Reader Hath Patience, of the Association's 1960 Christmas Hi-Jinks

» » THE PRACTICING LAW INSTITUTE has published monographs on a wide variety of legal subjects which have been of great value to the profession. There is, however, a passage in one of them about which we have harbored doubt over the years and this doubt recurs at least annually, when we attend our Association's Christmas Hi-Jinks, as we did just last night, December 2.

The passage in question occurs in the monograph "Building a Practice", which indubitably contains a great deal of sound advice on how to attract and hold clients, and our recurrent skepticism is centered on this one admonition:

"If you are offered a comic role in a show which your lodge or club organization is putting on, should you accept? Even if you carry the role successfully, I would advise against it. A lawyer should avoid being a comedian. Clients seldom come to comedians; their problems are serious for them. The time for you to serve is when the organization is faced with a serious problem, preferably of a legal nature, such as negotiating with the landlord or mortgagee . . ."

If it is suggested that this advice was not intended to apply to shows given by lawyers for lawyers, but only to those given by the general run of mankind for the general run of mankind, our mind reverts to many occasions of that kind, and particularly to the Christmas Jinks that was produced at the University Club for many years, in which lawyers and judges freely participated without any visible adverse effects upon their careers.

Indeed, for us the most memorable individual performance at the University Club was that of a lawyer (now a judge) who essayed the role of Haile Selassie and, in intricate state regalia and to the tune of the Mocking Bird, gave song to the problems, personal and professional, of that potentate. It became a perennial. So far as we know this never cost him a client, in hand or in the bush. We hope that some future Hi-Jinks Committee will update the original lyrics and inveigle Judge Philip H. Richards to exhume his Ethiopian regalia, tune up his tenor pipes and bring his Haile Selassie to one of our performances. If it doesn't entrance the customers we will turn in our badge to the Drama Critics Guild forthwith.

Returning to the Association's 1960 Hi-Jinks, which triggered this discursive dissertation, we commend the Committee for changing the locale to the more spacious quarters of the Statler-Hilton where the Jinks played to its largest audience, despite a 66-2/3% increase in the tariff, and where for the first time in years no

one had to be turned away for want of seating capacity.

We congratulate Mary Waters, the Jinks Chairman, on a job well done as administrator, co-author, and indefatigable performer. Ever since she wowed them a couple of years ago as the well-rehearsed plaintiff in the televised trial, she has been indispensable. As for the show itself, it was comfortably among the best within recent memory, well-written and, as Jinks go, unusually well-paced.

Space forbids detailed comments on the *dramatis personae*. We are glad they had never read the admonition quoted above, or, if they had, that they didn't take it seriously. Many of them were excellently cast, some of them turned in very amusing performances, and none of them (*mirable dictu*) was really lousy. With that summary we will have to be content.

But not quite. If any single performance stole the show it was that of the Honorable Alfred P. Peracca as a limber-legged lush on the loose. We predict that he will become a perennial. We also predict that if he has another dancing bit he will be supplied with partners in relays, for we got the impression that the Honorable Kathleen Parker was a bit fagged after he had finished flinging her about in the finale.

• • •

Non-Legal Nonsense

Returning from lunch the other day I encountered Tom Rice, who brought me up to date on the situation in the Congo, as follows:

It seems there was this man from Mars who landed in the jungle and promptly addressed the first Congolese he encountered as follows: "Please take me to your leader."

"Lumumba or Tsombe?"

"Please take me to your leader. We can dance later."

Then there was that cable to the United Nations from the Congo back country. It read: "Please send us some more Ghanaian troops. The last ones tasted very good."

* * *

The Question of the Month

What lawyers have declined appointment to the Supreme Court of the United States?

For the answer, see the next page, if there is one. We never know for sure when we send in our copy. If there isn't, hurry back next month.

* * *

Out of the Mouth of Babes (III)

The *National Bar Examiner* is the source of the following words of wisdom garnered from answers to bar examination questions.

(1) It is to be remembered that a man who has died can have no further children.

(2) A's testimony that B said he was driving too fast is not admissible for it is evidence of negligence and negligence is immaterial and not in issue in wrongful death actions.

(3) A verbal contract to sell land must be in writing.

(4) Re: Premeditation and deliberation in a felony murder, the penal law clearly states this point by omitting it.

(5) B's testimony is inadmissible because it is self-serving. It helps out his case.

* * *

Read It First In Brothers-In-Law

Or at least second.

On pages 60 and 62 of the November-December, 1960, issue of *Case and Comment* are items that appeared in the January, 1960 installment of this department.

* * * *

Fee Tales (III)

"Legend has it that Mr. Justice Holmes stated that the standard to be applied by a court in allowing attorneys' fees is to be reasonably mean." —Kenison, C.J., in *Concord National Bank v. Haverhill* (101 N. H. 416), 145 A2d 61.

* * *

Fair Warning

A usually reliable Northern California correspondent reports encountering the following warning sign posted on a road near Sausalito: "Trespassers Will Be Violated."

* * *

Frank W. Grinnell

Frank W. Grinnell recently became the second recipient of the Gold Medal of the **Massachusetts** Bar Association. He has represented that association for many years at meetings of the ABA[1] and due largely to that he is known to many lawyers outside his home state.

He has served as secretary of the Judicial Council of Massachusetts since its formation in 1925.

He served from 1915 to 1960 as secretary of the Massachusetts Bar Association and this year that association created the position of secretary emeritus "without any duties attached" and elected Mr. Grinnell to it "in appreciation of his years of devoted service . . . and as an expression . . . of esteem and affection. . . ."

He is still serving as editor-in-chief of *Massachusetts Law Quarterly*, a job

[1]According to a copy of *American Bar News* which has arrived just as the galley proof was being read, Mr. Grinnell is the senior member of the House of Delegates in point of continuous service.

A GIFT *for a* LAWYER

HANDSOME AND WONDERFULLY WELCOME is a gift of "Lawyers of Los Angeles" as *your* mark of friendship to a fellow attorney. Historian Robinson has spanned the period from the old Mexican *alcalde* days, through the wild lynch-law period of a frontier community down to modern times. Included are scores of celebrated court cases and pen portraits of the famed attorneys who have made Los Angeles County legal history. There are photographic portraits, too, and many rare old engravings of the Los Angeles of yesterday. Truly a delightful Christmas gift for any lawyer . . . including yourself.

The price: $7.50 plus 30 cents tax.
Address: THE WARD RITCHIE PRESS,
1932 Hyperion Avenue
Los Angeles 27, California

he took on 45 years ago. And no bar association publication that crosses our desk is as completely the creation of its editor as is the *Quarterly*. He writes forewords to articles and if someone else has written a foreword he is likely to write an introduction to the foreword. He writes postscripts to articles, particularly if he disagrees with them. He is continually calling questions of legal or historical interest to the members of the Massachusetts bar through short items that are sown throughout the *Quarterly* and now and then he will produce one of its full length articles himself—he had two of them in a recent issue. By actual count his name, or the familiar initials "F.W.G.," appeared no less than 18 times in the same issue.

• • •

Douglas Disagrees with Colorado

"With all deference to the Supreme Court of Colorado I feel that a trial on radio or television is quite a different affair than a trial before the few people who can find seats in the conventional courtroom. The already great tensions on the witnesses are increased when they know that millions of people watch their every expression, follow each word. The trial is as much of a spectacle as if it were held in the Yankee Stadium or the Roman Coliseum. . . . The presence and participation of a vast unseen audience creates a strained and tense atmosphere that will not be conducive to the quiet search for truth.

"Photographing a trial with ordinary cameras does not entail those evils. But it spawns evils of its own. . . . Picture-taking in the courtroom is more than disconcerting. It does not comport with traditional notions of a fair trial. A man on trial for his life or liberty needs protection from the mob. Mobs are not interested in the administration of justice. They have base appetites to satisfy. Even still pictures may distort a trial, inflame a proceeding by depicting an unimportant miniscule of the whole, or lower the judicial process in public eyes by portraying only the sensational moments."—From an address by Supreme Court Justice William O. Douglas at the Law School of Colorado University as reported in *Editor & Publisher*.

• • •

Answer to the Question of the Month

John W. Davis of New York and John G. Johnson.

Mr. Justice Frankfurter is our authority for this answer. He states that three times Presidents wanted Mr. Johnson to go on the Supreme Court, but he declined because he preferred the life of a lawyer. Mr. Justice Frankfurter adds that Mr. Johnson was given to blunt talk and when friends said to him, "Well, why don't you go on the Supreme Court?" he said, "You want me finally to tell you the true reason? I would rather talk to those damn fools than listen to them!"[1]

• • •

COURT ATTIRE

On the occasion of Call and Admission it has been the custom of the Benchers to remind the petitioners of the correct requirements for Court dress.

Lately it has been observed that certain members of the profession have been improperly or untidily attired in Court.

Proper dress means clean white shirt, collar and tabs, dark trousers

[1]Mr. Justice Frankfurter's talk to students at the annual meeting of the Council of the Harvard Law School Association, at which he was guest of honor, on April 30, 1960.

or skirt, and vest and gown with black shoes.

Improper dress indicates a lack of respect for the Court and lowers the dignity of the profession.

It is hoped that it will not be necessary to mention this matter again. – Notice in *The Advocate*, monthly publication of the **Vancouver, B.C.** Bar Association.

• • •

The Seat of the Trouble

The Journal of the Missouri Bar tells a story about a law firm in **Springfield** which remodeled and redecorated its offices. When it came to furniture it went strictly moderne. Everybody was quite happy with the result, but one of the partners developed a backache. After about a week he discovered he'd mistaken one of the waste baskets for his new chair.

• • •

Each year the **Akron** Bar Association makes a Naturalized American Award. This award, believed to be the first of its kind in this country, was established "for the purpose of recognizing the many outstanding contributions made by naturalized Americans in the community."

All naturalized Americans living or working in Summit County, of which Akron is the county seat, are eligible for nomination. Selection of the recipient is based upon the distinction which the individual has attained in his particular field or profession and the contribution made to the community or public welfare.

• • •

Joseph E. Gold, Judge of the Pennsylvania Court of Common Pleas, begins an article in *The Shingle* of the **Philadelphia** Bar Association as follows:

"Judges are human. Being human, they possess and show a motley collection of deficiencies and faults, including succumbing to temptations to poke fun at lawyers. Once in a while, however, the poor legal worm turns, resulting in some interesting instances of lawyers' humor and irony.

"Several of them are classics, one of which happened many, many years ago when the Lord Justice became very exasperated at an advocate in England, stating: 'Counselor, if your version of the law is correct, I ought to burn all of my law books.'

"Whereupon, the lawyer stated, 'Your Worship, don't burn them, read them.'"

• • •

Excerpts from reports to the annual meeting of **New York County** Lawyers Association:

"Our building has been selected for inclusion in the Index of Architecturally Historic Structures in New York City. . . ."—The retiring President.

"Ever mindful of the comfort of the members, we have contracted to spend $68,000 to air condition the building. . . ."—The perennial Treasurer.

• • •

Sign of the Times

In a luggage shop on Seventh Street, where we went the other day to let a contract for the repair of a brief case, we observed the following sign propped against the back of the cash register:

WE HONOR

AMERICAN EXPRESS CHEQUES

BANKAMERICARDS

INTERNATIONAL CHARGE

U. S. CURRENCY.